

**REMARKS**

Please reconsider the application in view of the above amendments and the following remarks. Applicants thank the Examiner for carefully considering this application, and for courtesies extended during the Examiner Interview conducted on October 7, 2009.

**Examiner Interview**

An Examiner Interview was conducted on October 7, 2009 with Examiner Arcos, and the corresponding Interview Summary was issued on October 22, 2009. In addition to the summary provided by the Examiner in the Interview Summary, Applicants note the following:

In the Examiner Interview, Applicants proposed amending independent claims 1, 17, and 32 to clarify aspects of the invention. The Examiner agreed that the proposed amendments (which are consistent with the claim amendments in the instant response) appear to overcome the 35 U.S.C. §103 rejection of independent claims 1, 17, and 32. However, the Examiner reserved the right to conduct further searches of prior art.

**Disposition of the Claims**

Claims 1-32 are pending in this application. Claims 1, 17, and 32 are independent. The remaining claims depend, directly or indirectly, from independent claims 1, 17, and 32.

**Amendments to the Claims**

Independent claims 1, 17, and 32 are amended by this reply to clarify aspects of the invention. Further, dependent claims 7 and 19 are amended by this reply to address issues of antecedent basis resulting from the amendments to independent claims 1 and 17. Support for the

proposed amendments may be found, for example, in Figures 2-3 and paragraphs [0030]-[0037] of the originally filed Specification. No new subject matter has been added by way of these amendments.

### **Rejections under 35 U.S.C. § 112**

Claim 9 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. *See* Office Action dated August 7, 2009 (“Office Action”), p. 2. To the extent the rejection may apply to the pending claims, the rejection is traversed.

In rejecting claim 9, the Examiner states that “it is not clearly understood what are the criteria for deactivating the container.” *See* Office Action, p. 2. In other words, the Examiner contends that the claimed step of *deactivating the container* must be performed after satisfying specific criteria, and that such criteria must be specified in the claim.

Applicants respectfully disagree with the Examiner’s contentions. Specifically, 35 U.S.C. § 112 (or any other relevant law) does not require that the steps of a method claim be performed under any particular criteria. Further, as discussed in the Specification, *deactivating the container* is not performed under any particular criteria. Thus, it follows logically that there can be no requirement to include such criteria in claim 9. Therefore, claim 9 is believed to comply with the requirements of 35 U.S.C. § 112, second paragraph. Accordingly, withdrawal is respectfully requested.

**Rejections under 35 U.S.C. § 103**Claims 1-5, 7-8, 11-12, 14, and 16

Claims 1-5, 7-8, 11-12, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent Pub. No. 2003/0037092 (“McCarthy”) in view of US Patent No. 7,406,522 (“Riddle”). To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

35 U.S.C. § 103 provides the statutory definition of obviousness. The framework for applying 35 U.S.C. § 103 was initially set out by the Supreme Court in *Graham v. John Deere Co.*, 86 S.Ct. 684 (1966). This framework was reaffirmed by the court in *KSR Intern. Co. v. Teleflex Inc.* 127 S.Ct. 1727, 1734 (2007). Based on the above framework, one rationale that may be used to support a conclusion of obviousness is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art. *See KSR*, 127 S.Ct. at 1739. In the instant case, the Examiner, in articulating the analysis used to reject the claims under 35 U.S.C. § 103, has used the above rationale to support a rejection of obviousness in view of McCarthy and Riddle. *See Office Action*, p. 2-6.

Applicants respectfully submit that amended independent claim 1 includes at least some limitations which are not disclosed or rendered obvious by McCarthy and Riddle, whether considered separately or in combination. Specifically, McCarthy and Riddle are at least silent with regard to a computer system which includes multiple resource pools, where a resource pool includes multiple containers. Therefore, Applicants submit that amended claim 1 and claims depending therefrom overcome the rejection under 35 U.S.C. § 103 based on McCarthy and Riddle. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 6

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy and Riddle, and further in view of US Patent Pub. No. 2005/0091346 (“Krishnaswami”). To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy and Riddle do not disclose or render obvious the limitations of amended independent claim 1. Further, Krishnaswami does not disclose or otherwise provide that which McCarthy and Riddle lack. Specifically, Krishnaswami, like McCarthy and Riddle, is also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent claim 1 is also patentable over McCarthy, Riddle, and Krishnaswami. Claim 6 depends from independent claim 1, and thus is patentable over the cited art for at least the same reasons. Accordingly, for at least the above reasons, withdrawal of this rejection is respectfully requested.

Claim 9

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy and Riddle, and further in view of US Patent Pub. No. 2004/0158834 (“Ham”). To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy and Riddle do not disclose or render obvious the limitations of amended independent claim 1. Further, Ham does not disclose or otherwise provide that which McCarthy and Riddle lack. Specifically, Ham, like McCarthy and Riddle, is also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent

claim 1 is also patentable over McCarthy, Riddle, and Ham. Claim 9 depends from independent claim 1, and thus is patentable over the cited art for at least the same reasons. Accordingly, for at least the above reasons, withdrawal of this rejection is respectfully requested.

#### Claim 10

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy, Riddle, and Ham, and further in view of US Patent No. 6,609,213 (“Nguyen”). To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy, Riddle, and Ham do not disclose or render obvious the limitations of amended independent claim 1. Further, Nguyen does not disclose or otherwise provide that which McCarthy, Riddle, and Ham lack. Specifically, Nguyen, like McCarthy, Riddle, and Ham, is also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent claim 1 is also patentable over McCarthy, Riddle, Ham, and Nguyen. Claim 10 depends from independent claim 1, and thus is patentable over the cited art for at least the same reasons. Accordingly, for at least the above reasons, withdrawal of this rejection is respectfully requested.

#### Claim 13

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy and Riddle, and further in view of US Patent No. 6,578,141 (“Kelly”) and US Patent No. 7,117,371 (“Parthasarathy”). To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy and Riddle do not disclose or render obvious amended independent claim 1. Further, Kelly and Parthasarathy, whether viewed separately or in combination, do not disclose or otherwise provide that which McCarthy and Riddle lack. Specifically, Kelly and Parthasarathy, like McCarthy and Riddle, are also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent claim 1 is also patentable over McCarthy, Kelly, Shuster, and Parthasarathy. Claim 13 depends, either directly or indirectly, from independent claim 1, and thus is patentable over the cited art for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

#### Claim 15

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy and Riddle, and further in view of US Patent No. 7,150,020 ("Kalhour"). To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy and Riddle do not disclose or render obvious the limitations of amended independent claim 1. Further, Kalhour does not disclose or otherwise provide that which McCarthy and Riddle lack. Specifically, Kalhour, like McCarthy and Riddle, is also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent claim 1 is also patentable over McCarthy, Riddle, and Kalhour. Claim 15 depends from independent claim 1, and thus is patentable over the cited art for at least the same reasons. Accordingly, for at least the above reasons, withdrawal of this rejection is respectfully requested.

Claims 17-21, 29, and 31-32

Claims 17-21, 29, and 31-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy. To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

Applicants respectfully submit that amended independent claims 17 and 32 include at least some limitations which are not disclosed or rendered obvious by McCarthy. Specifically, McCarthy is at least silent with regard to systems which include multiple resource pools, where a resource pool includes multiple containers. Therefore, Applicants submit that amended independent claims 17 and 32, and claims depending therefrom, overcome the rejection under 35 U.S.C. § 103 based on McCarthy. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 22 and 28

Claims 22 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy in view of US Patent No. 6,799,208 ("Sankaranarayan"). To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy does disclose or render obvious the limitations of amended independent claim 17. Further, Sankaranarayan does not disclose or otherwise provide that which McCarthy lacks. Specifically, Sankaranarayan, like McCarthy, is also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent claim 17 is also patentable over McCarthy and Sankaranarayan. Claims 22 and 28 depend from independent claim 17, and thus are patentable over the cited art for at least the same reasons. Accordingly, for at least the above reasons, withdrawal of this rejection is respectfully requested

Claim 30

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy in view of Shuster. To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy does not disclose or render obvious the limitations of amended independent claim 17. Further, Shuster does not disclose or otherwise provide that which McCarthy lacks. Specifically, Shuster, like McCarthy, is also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent claim 17 is also patentable over McCarthy and Shuster. Claim 30 depends, either directly or indirectly, from independent claim 17, and thus is patentable over the cited art for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 23-26

Claims 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy in view of Kalhour. To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy does not disclose or render obvious amended independent claim 17. Further, Kalhour does not disclose or otherwise provide that which McCarthy lacks. Specifically, Kalhour, like McCarthy, is also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent claim 17 is also patentable over McCarthy and Kalhour. Claims 23-26 depend, either directly or indirectly, from independent claim 17, and thus are



patentable over the cited art for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 27

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy in view of Kalhour and Krishnaswami. To the extent the rejection applies to the pending claims, the rejection is respectfully traversed.

As discussed above, McCarthy and Kalhour, whether viewed separately or in combination, do not disclose or render obvious amended independent claim 17. Further, Krishnaswami does not disclose or otherwise provide that which McCarthy and Kalhour lack. Specifically, Krishnaswami, like McCarthy, is also silent with regard to a computer system which includes multiple resource pools, and with regard to one of the resource pools including multiple containers. Thus, amended independent claim 17 is also patentable over McCarthy, Kalhour, and Krishnaswami. Claim 27 depends, either directly or indirectly, from independent claim 17, and thus is patentable over the cited art for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

**Conclusion**

Applicants believe this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 03226/432001).

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Respectfully submitted,

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